## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

THE HIPSAVER COMPANY, INC.,	) Civil Action No. 05-10917 PBS
Plaintiff,	
v.	) ) ORAL HEARING REQUESTED
J.T. POSEY COMPANY,	
Defendant.	) )
AND RELATED COUNTERCLAIM.	) ) )

## MOTION OF DEFENDANT J.T. POSEY COMPANY, INC. FOR SUMMARY JUDGMENT ON COMPLAINT OF PLAINTIFF THE HIPSAVER COMPANY INC.

Defendant and Counterclaimant J.T. Posey Company, Inc. ("Posey") hereby moves this Court for summary judgment in its favor and against Plaintiff and Counterclaimant The HipSaver Company ("HipSaver") on all of the claims in HipSaver's First Amended Complaint.

The instant motion is made pursuant to Rule 56(b) of the Federal Rules of Civil Procedure which provides that a party against whom a claim is asserted may at any time move for summary judgment in the party's favor as to all or any part of the claim.

Pursuant to Rule 56(c), the motion is based upon the grounds that the pleadings, depositions, answers to interrogatories and available affidavits show that there is no genuine issue as to any material fact and that Posey is entitled to judgment as matter of law on all of the claims in the First Amended Complaint.

The instant motion will be based upon this notice, the accompanying memorandum of points and authorities, the accompanying Appendix of Exhibits, the accompanying Statement of Uncontroverted Facts, the accompanying declarations, the files and records in this action, the arguments of counsel and such other matters as may be presented to the Court at the hearing on the motion.

The instant motion is being made following a good-faith conference of counsel on December 7, 2008.

Dated: December 11, 2006

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg

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## **CERTIFICATE OF SERVICE**

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electornic filing.

December 11, 2006

/s/ Donald K. Piper
Donald K. Piper